IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.9 OF 2002
and
CIVIL APPLICATION NO.43 OF 2002

1. Arsenio Xavier Dias,
   s/o late Manuel Vincent Dias,
   major in age, married,
   r/o St. Barbara, St.Cruz,
   Ilhas, Goa;

2. Olavo Piedade Socorro Dias;

3. Jose Agnelo Nelson Dias;

4. Joao Pedro Dias;

5. Deleted.

6. Armstrong Cipriano Milagres Dias;

7. Collin Benjamin Dias;

8. Antonio Lourenco Dias,

   all residing at St.Barbara,
   St. Cruz, Ilhas, Goa..... APPELLANTS.

VERSUS

1. Jose Manuel Nascimento Dias
   @ Joao Manuel Nascimento Dias,
   since deceased, who was from
   St. Cruz, Ilhas, Goa;

2. Adriana Angelica Da
   Presentacio Feleciano Dias,
   since deceased, who was from
   Panaji, Ilhas, Goa;

3. Francis Xavier Paulino Dias;

4. Martha Angelica De Araujo @
   Angela Dias,

   Both residing at H.No.1352/B,
   St. Barbara, St. Cruz, Ilhas, Goa;

5. Antonio Edwin Dias,
   r/o St. Barbara, St.Cruz,
   Ilhas, Goa.....RESPONDENTS.

Mr. Nitin Sardessai, Advocate for the Appellants.

Mr. P.A. Kholkar, Advocate for the Respondents No.3 and 4.

CORAM: P.V. KAKADE,J.

DATED: OCTOBER 11, 2002.

ORAL JUDGMENT

Rule. Rule made returnable forthwith.

This Appeal is preferred against the Order passed by the learned Civil Judge, Senior Division, Panaji, in Inventory Proceedings No.4/99/A whereby the auction fixed of the impugned property was stayed until the 'cabeca de casal' complied with the stages of notifying additional interested parties.

2. I heard Mr. Nitin Sardessai for the Appellant and Mr. Kholkar for the Respondents No.3 and 4.

3. The facts in the background of the dispute, briefly, are that the interested parties received the notice from the Comarca Court about the fixation of the matter for auction on 23-04-1999. Thereafter, the interested parties, through their Advocate,inspected the file and were said to be surprised to find that the proceedings were hurriedly gone through and were ready within a span of two months allegedly flouting all rules of

procedure merely on the basis of the procedure under Section 108 of the Evidence Act when the special law provides for special procedure. Certain objections were raised and those were replied to. The learned Civil Judge considered the objections and came to the conclusion that though the Inventory Proceedings was initiated without the death certificate of the Inventariado and the procedure laid down under Article 1369 Para 1 was not complied with, however, there was evidence of the concerned persons and it was established by other mode of substantive evidence on record.

4. However, the learned Civil Judge upheld the objection raised by the Respondents that the interested parties were not joined to the Inventory Proceedings and, therefore, the auction could not be held. It was also submitted on behalf of the Respondents that though the auction is proposed to be held regarding one property, there are several other properties which have not been taken into account and unless those properties are held also liable to be auctioned by proper enquiry, the auction of one property cannot be held. The learned Civil Judge upheld the latter two objections and stayed the auction and hence the Appeal against such Order.

5. On perusal of the entire Order and the record available in the case, it is quite clear that the interested parties in the concerned case are the married sisters and evidently they have executed the renunciation of their share. The learned Civil Judge has held that the renunciation by the sisters is not sufficient as the sisters have married and their 50% share goes also to their husbands by virtue of the marriage as per the custom. However, it is also brought to my notice that the relinquishment deed has also been executed not only by the married sisters but by their husbands also. Moreover, it is submitted by Mr. Sardessai, the learned Counsel for the Appellant that they were even prepared to present the said married sisters along with their husbands to testify before the Court about the fact of renunciation of their share in the property involved. In view of this position and taking into account the relevant provisions including Article 2035 and Article 2043, I hold that the issue regarding renunciation was required to be accepted by the learned Civil Judge, more so when the Appellant was ready to present the married sisters and their husbands to testify to that effect. In view of this position, I prefer to disagree with the learned Civil Judge when he has upheld the objection raised on behalf of the

Respondents that the interested parties are not joined to the said proceedings.

6. Similarly, regarding the other objection, the reason for stay issued by the lower Court is said to be the requirement of the enquiry in respect of other properties alleged to be held by the family. In fact, I agree with the submission made on behalf of the Appellant that the said objection is taken only with intention to delay the proceedings, especially when there is no sufficient evidence on record that there exist other properties. In my considered view, that was not the proper ground for staying the auction in the said proceedings, especially when there is no legal bar for holding subsequent auction if it is revealed that other properties are also liable to be joined in the said proceedings.

7. In the result, I hold that the grounds raised on behalf of the Respondents in this regard to make plea for stay of the Inventory Proceedings are not sufficient and are also likely to delay the proceedings itself and, therefore, cannot be upheld in law. In the result, the Order passed by the Civil Judge, Senior Division, Panaji, staying the auction in the Inventory Proceedings No.4/99/A has

to be set aside as bad in law.

8. In the result, the Appeal is allowed and the impugned Order is set aside. No order as to costs.

The Civil Application is also disposed of.

P.V. KAKADE,J.

ac.